

Notice of Allowability

Application No.

09/824,551

Examiner

Kathleen M Kerr

Applicant(s)

BATHE ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/24/03.
2. ☒ The allowed claim(s) is/are 27,29,34,36,37,42 and 43.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____ | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other _____ |

DETAILED ACTION

Application Status

1. In response to the previous Office action, a Final rejection (mailed on May 29, 2003), Applicants filed two after-final amendments received on September 25, 2003 and October 24, 2003. Said amendments cancelled Claims 31 and 39 and amended Claims 20, 21, 30, and 38. Thus, Claims 20-30, 32-38, and 40-42 are pending in the instant Office action and will be examined herein.

Priority

2. As previously noted, the instant application is granted the benefit of priority for the foreign application 100 44 755.4 filed in Germany on September 9, 2000 and for the foreign application 101 12 105.9 filed in Germany on March 14, 2001. A translation of 100 44 755.4 was filed on March 4, 2003; said priority document describes the invention claimed in Claims 20-42. Thus, the effective filing date of the pending Claims is September 9, 2000.

Drawings

3. As previously noted, the drawings have been approved by the Draftsmen and are, therefore, entered as formal drawings acceptable for publication upon the identification of allowable subject matter.

Withdrawn - Objections to the Specification

4. Previous objection to the Abstract for not completely describing the disclosed subject matter is withdrawn by virtue of Applicants' amendment.

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5. Previous objection to the specification for informalities is withdrawn by virtue of Applicants' amendment.

Withdrawn - Claim Objections

6. Previous objection to Claim 22 for depending from a rejected claim is withdrawn by virtue of the Examiner's amendment below authorized by Applicants' representative.

7. Previous objection to Claim 39 under 37 C.F.R. § 1.75 as being a substantial duplicate of Claim 38 is withdrawn by virtue of Applicant's cancellation of said claim.

Withdrawn - Claim Rejections - 35 U.S.C. § 112

8. Previous rejection of Claims 30-32, 35, and 41 under 35 U.S.C. § 112, second paragraph, is withdrawn by virtue of the Examiner's amendment below authorized by Applicants' representative.

9. Previous rejection of Claims 20, 21, 31, 33, and 40 under 35 U.S.C. § 112, first paragraph, written description, is withdrawn by virtue of the Examiner's amendment below authorized by Applicants' representative.

10. Previous rejection of Claims 30-32, 35, and 41 under 35 U.S.C. § 112, first paragraph, scope of enablement, is withdrawn by virtue of the Examiner's amendment below authorized by Applicants' representative.

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11. Previous rejection of Claim 42 under 35 U.S.C. § 112, first paragraph, enabling deposit, is withdrawn by virtue of Applicant's amendment to the specification to comply with all deposit requirements for the claimed vector.

EXAMINER'S AMENDMENT

An extension of time under 37 C.F.R. § 1.136(a) is required in order to make an Examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on November 26, 2003, Thomas Cawley (listed under Customer Number 00909 on said date) requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 03-3975 the required fee of \$530 (\$950 fee for the third month less \$420 fees already paid) for this extension and authorized the following Examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Amendments to the Claims

12. The claims have been amended as follows:

- a) Cancel Claims 20-26, 28, 30, 32, 33, 35, 38, 40, and 41.
- b) Amend Claim 34 as follows:

---34. A vector comprising the isolated polynucleotide of Claim 27.---

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c) Add new Claim 43 as follows:

---43. A method for the fermentative preparation of L-lysine, the method comprising:

- a) fermentation of an L-lysine producing *Corynebacterium glutamicum* bacteria into which the vector of Claim 42 has been transformed,
- b) concentration of L-lysine in the medium or in the cells of the bacteria, and
- c) isolation of L-lysine.---

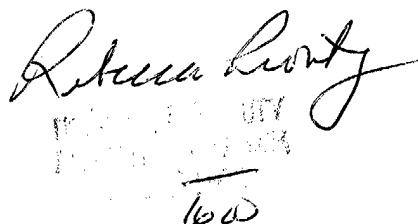
Conclusion

13. Claims 27, 29, 34, 36, 37, 42, and 43 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (703) 305-1229. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (703) 308-3804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



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November 26, 2003